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August 10, 2010

*Also Admitted in Wisconsin

Via Email Only

Patrick Elliott
Staff Attorney
Freedom From Religion Foundation, Inc.
P.O. Box 750
Madison, WI 53701

Dear Mr. Elliott:

As you know, this office represents Independent School District No. 761, Owatonna, Minnesota. In this regard, we were asked to respond, on behalf of the School District, to the letter from Rebecca S. Markert dated March 16, 2010 as well as your follow-up email to our office on August 2, 2010. We apologize for the delay in responding to Ms. Markert's original inquiries.

In response to the specific inquiries regarding the Young Life organization, the School District did not provide Young Life with a reserved parking space for purposes of the auction it held on or about April 17, 2010. The parking sign that was referenced in Ms. Markert's March 16, 2010 letter has been removed. No parking privileges are presently being provided to Young Life or any other organization outside of the School District (with the exception of law enforcement).

You and Ms. Markert also inquired as to the School District's position with respect to your concerns that the School District is allowing Young Life ministers special access to School District students by their presence at the High School during the school day and distribution of promotional materials. The School District is aware that individuals from Young Life have been allowed to visit High School students at the High School campus from time to time. The School District has had a very liberal practice with respect to allowing visitors at the High School campus. The School District has not placed restrictions upon any parent, family member, friend or community member from visiting students during noninstructional portions of the school day, regardless of their religious affiliation. The School District was not aware anyone from Young Life was distributing religious materials, attempting to proselytize or otherwise attempting to recruit or indoctrinate students, nor is it clear to the School District that this had been occurring.

Notwithstanding the foregoing, the School District is sensitive to the concerns that you have raised. As a result, the School District has been and is continuing to review and revise its

policies, procedures and practices. Regardless of whether the activities have or have not occurred in the manner you describe, the School District understands that these issues could be addressed more clearly and is working to do so.

For example, with respect to allowing visitors on school premises during the school day, the School District previously provided to Ms. Markert a copy of the School District's procedures with respect to visitors that was contained in its High School Handbook. As noted in the Handbook, visitors during the school day are expected to report to the office for permission to be in the building and obtain a pass for this purpose. The School District has not had a formal process for registering visitors, such as requiring visitors to sign in and out of the building and obtaining specific permission to be on campus.

Accordingly, the School District will be seeking to formalize a visitors policy and procedure that will apply to all buildings throughout the School District. In this regard, the School District is currently considering the adoption of a more formal visitors policy, such as the policy recommended by the Minnesota School Boards Association ("MSBA"), a copy of which is enclosed. The School District also will be creating procedures to accompany this policy. We anticipate that these procedures will include a more formalized process requiring that visitors sign in and out of the building, obtain administrator permission to be in the building during school hours, obtain a pass and wear a badge or other form of identification while in the building. We also expect that these procedures will require that notice of this policy be uniformly posted at each school building entrance.

In addition, the School District will be reviewing the implementation of a policy related to providing students with equal access to its facilities, to address issues of preferential treatment, such as the enclosed MSBA model policy entitled "Equal Access to School Facilities." The School District also will be reviewing for possible adoption MSBA Model Policy 609 – Religion, a copy of which is enclosed, which pertains to the status of religion relative to School District programs. While these policies and procedures have not yet been finalized or adopted by the School District, we can provide you with copies of these policies and procedures once adopted. We anticipate such action will be taken during the early part of the 2010–11 school year.

With respect to the standards in allowing Young Life or any other non-School District individual or organization access to students during the school day, we understand that the policies and procedures referenced above do not directly address the issue you raise. In this regard, the School District will be considering, in conjunction with its visitors policy and policy with respect to religion, how to address visits by nonparents/guardians during the school day, including lunch hours and other noninstructional times, and whether and what restrictions to impose.

Notwithstanding the foregoing, it is the School District's position that, regardless of such access, visits by anyone shall not be utilized for the purpose of distributing religious or other

nonschool-related materials or promoting religious organizations or activities. Students who wish to engage in such activities will be required to comply with the Equal Access to School Facilities policy currently under consideration. Outside organizations will be required to comply with the School District's Facility Use policy, referenced above.

As you are aware, the School District does have in place a policy with respect to the distribution of materials by nonschool personnel. The School District also has in place a policy related to the distribution of nonschool-sponsored materials on school premises by students and employees. The School District will be looking to update and revise these two policies during this school year, as necessary. Again, while it is not clear to the School District that Policy 904, referenced by Mr. Markert in her letter, was not followed by Young Life or the School District, the School District will be taking steps to ensure that this policy is strictly followed in the future. Again, the School District will be updating and revising these policies as necessary. The School District also will be reviewing the requirements of these policies with all of its administrators and other staff responsible for the implementation and oversight of these requirements as well as with students and staff. In addition, the School District will be reviewing its method of communicating this policy to the public and ensuring that all members of the community, including Young Life, adhere to these requirements.

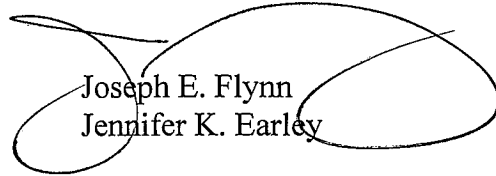
Finally, you requested in your August 2, 2010 email an explanation for the rate charged to Young Life for the use of school facilities. You noted that the original contract states that the charges for the use of facilities would be \$713.50, but the second contract provides that Young Life was not charged.

In response to your inquiry, the initial contract to which you refer is a document utilized by the School District for reserving facilities and equipment. It is not the finalized contract. A computerized program through which this information is entered automatically inserts fees. When the event neared and the reservation was examined, the School District Activities Director and/or Business Manager reviewed the reservation and corrected it to classify Young Life as a nonprofit youth group, which is not assessed fees under the School District's policy, a copy of which previously was provided to Ms. Markert. The School District historically has interpreted Category I groups, which include nonprofit youth groups, very broadly and has not charged any groups any fees for use of its facilities or equipment unless they are for-profit groups.

The School District has since reviewed its policy and fee schedule relative to this issue. The School District acknowledges that Young Life should have been classified as a Category II group and charged for its use of facilities and equipment in accordance with its policy and procedures. The School District intends to correct this practice with all future facility and equipment users, including, but not limited to, Young Life.

We hope that the foregoing has addressed your questions. However, feel free to contact us if you wish to discuss these issues further.

Very truly yours,



Joseph E. Flynn
Jennifer K. Earley

JEF/JKE:df
Encs.

c: Dr. Tom Tapper, Superintendent of Schools (*via email only*)

Adopted: _____

MSBA/MASA Model Policy 609

Orig. 1995

Revised: _____

Rev. 2000

609 RELIGION

I. PURPOSE

The purpose of this policy is to identify the status of religion as it pertains to the programs of the school district.

II. GENERAL STATEMENT OF POLICY

- A. The school district shall neither promote nor disparage any religious belief or nonbelief. Instead, the school district encourages all students and employees to have appreciation for and tolerance of each other's views.
- B. The school district also recognizes that religion has had and is having a significant role in the social, cultural, political, and historical development of civilization.
- C. The school district recognizes that one of its educational objectives is to increase its students' knowledge and appreciation of music, art, drama, and literature which may have had a religious basis or origin as well as a secular importance.
- D. The school district supports the inclusion of religious music, art, drama, and literature in the curriculum and in school activities provided it is intrinsic to the learning experience and is presented in an objective manner without sectarian indoctrination.
- E. The historical and contemporary values and the origin of various religions, holidays, customs, and beliefs may be explained in an unbiased and nonsectarian manner.

III. RESPONSIBILITY

- A. It shall be the responsibility of the superintendent to ensure that the study of religious materials, customs, beliefs, and holidays in the school district is in keeping with the following guidelines:
 - 1. The proposed activity must have a secular purpose.
 - 2. The primary objective of the activity must be one that neither advances nor inhibits religion.
 - 3. The activity must not foster excessive governmental relationships with religion.

4. Notwithstanding the foregoing guidelines, reasonable efforts will be made to accommodate any student who wishes to be excused from attendance at school for the purpose of religious instruction or observance of religious holidays.
- B. The superintendent is granted authority to develop and present for school board review and approval directives and guidelines for the purpose of providing further guidance relative to the teaching of materials related to religion. Approved directives and guidelines shall be attached as an addendum to this policy.

Legal References: U. S. Const., amend. I
Minn. Stat. § 120A.22, Subd. 12(3) (Compulsory Instruction)
Minn. Stat. § 120A.35 (Absence From School for Religious Observance)
Minn. Stat. § 121A.10 (Moment of Silence)
Good News Club v. Milford Central School, 533 U.S. 98, 121 S.Ct. 2093, 150 L.Ed.2d 151 (2001)
Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290, 120 S.Ct. 2266 (2000)
Tangipahoa Parish Bd. of Educ. v. Freiler, 530 U.S. 1251, 120 S.Ct. 2706 (2000)
Lemon v. Kurtzman, 403 U.S.602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971)
Wigg v. Sioux Falls Sch. Dist., 382 F.3d 807 (8th Cir. 2004)
Doe v. School Dist. of City of Norfolk, 340 F.3d 605 (8th Cir. 2003)
Stark v. Independent Sch. Dist. No. 640, 123 F.3d 1068 (8th Cir. 1997)
Florey v. Sioux Falls Sch. Dist. 49-5, 619 F.2d 1311 (8th Cir. 1980)
Roark v. South Iron R-1 Sch. Dist., 573 F.3d 556 (8th Cir. 2009)
Child Evangelism Fellowship v. Elk River Area Sch. Dist. No. 728, 599 F.Supp.2d 1136 (D. Minn. 2009)
LeVake v. Independent Sch. Dist. No. 656, 625 N.W.2d 502 (Minn. App. 2001)
Minn. Op. Atty. Gen. 169-J (Feb. 14, 1968)
Minn. Op. Atty. Gen. 169-K (Oct. 21, 1949)
Minn. Op. Atty. Gen. 63 (1940)
Minn. Op. Atty. Gen. 120 (1924)
Minn. Op. Atty. Gen. 121 (1924)

Cross References: MSBA/MASA Model Policy 801 (Equal Access to School Facilities)

Adopted: _____

MSBA/MASA Model Policy 801

Orig. 1995

Revised: _____

Rev. 2006

801 EQUAL ACCESS TO SCHOOL FACILITIES

[Note: The provisions of this policy substantially reflect statutory requirements.]

I. PURPOSE

The purpose of this policy is to implement the Equal Access Act by granting equal access to secondary school facilities for students who wish to conduct a meeting for religious, political, or philosophical purposes during noninstructional time.

II. GENERAL STATEMENT OF POLICY

- A. The policy of the school district is not to deny equal access or a fair opportunity to, or to discriminate against, any students who wish to conduct a meeting, on the basis of the religious, political, philosophical, or other content of the speech at such meetings.
- B. The school board has created a limited open forum for students enrolled in secondary schools during which noncurriculum-related student groups shall have equal access and a fair opportunity to conduct meetings during noninstructional time.
- C. Student use of facilities under this policy does not imply school district sponsorship, approval, or advocacy of the content of the expression at such meetings.
- D. The school district retains its authority to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.
- E. In adopting and implementing this equal access policy, the school district will NOT:
 - 1. influence the form or content of any prayer or other religious activity;
 - 2. require any person to participate in prayer or other religious activity;
 - 3. expend public funds beyond the incidental cost of providing the space for student-initiated meetings;
 - 4. compel any school agent or employee to attend a school meeting if the content of the speech at the meeting is contrary to the beliefs of the agent or employee;

5. sanction meetings that are otherwise unlawful;
6. limit the rights of groups of students based on the size of the group;
7. abridge the constitutional rights of any person.

III. DEFINITIONS

- A. "Limited open forum" means that the school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time.
- B. "Secondary school" means any school with enrollment of pupils ordinarily in grades 7 through 12 or any portion thereof.
- C. "Sponsorship" includes the act of promoting, leading, or participating in a meeting. The assignment of a school employee for custodial, observation, or maintenance of order and discipline purposes does not constitute sponsorship of the meeting.
- D. "Meeting" includes activities of student groups which are permitted under a limited open forum and are not directly related to the school curriculum. Distribution of literature does not constitute a meeting protected by the Equal Access Act.
- E. "Noninstructional time" means time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends, including such other periods that occur during the school day when no classroom instruction takes place.

IV. FAIR OPPORTUNITY CRITERIA

Schools in this school district shall uniformly provide that:

- A. A meeting held pursuant to this policy is voluntary and student-initiated;
- B. There is no sponsorship of the meeting by the school or its agents or employees;
- C. Employees or agents of the school are present at religious meetings only in a nonparticipatory capacity;
- D. The meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and
- E. Nonschool persons may not direct, control, or regularly attend activities of student groups.

V. PROCEDURES

- A. Any student who wishes to initiate a meeting under this policy shall apply to the principal of the building at least 48 hours in advance of the time of the activity or meeting. The student must agree to the following:
1. All activities or meetings must comply with existing policies, regulations, and procedures that govern operation of school-sponsored activities.
 2. The activities or meetings are voluntary and student-initiated. The principal may require assurances of this fact.
- B. Student groups meeting under this policy must comply with the following rules:
1. Those attending must not engage in any activity that is illegal, dangerous, or which materially and substantially interferes with the orderly conduct of the educational activities of the school. Such activities shall be grounds for discipline of an individual student and grounds for a particular group to be denied access.
 2. The groups may not use the school name, school mascot name, school emblems, the school district name, or any name that might imply school or district sponsorship or affiliation in any activity, including fundraising and community involvement.
 3. The groups must comply with school policies, regulations and procedures governing school-sponsored activities.
- C. Students applying for use of school facilities under this policy must provide the following information to the principal: time and date of meeting, estimated number of students in attendance, and special equipment needs.
- D. The building principal has responsibility to:
1. Keep a log of application information.
 2. Find and assign a suitable room for the meeting or activity. The number of students in attendance will be limited to the safe capacity of the meeting space.
 3. Note the condition of the facilities and equipment before and after use.
 4. Assure proper supervision. Assignment of staff to be present in a supervisory capacity does not constitute school district sponsorship of the meeting or activity.
 5. Assure that the meeting or activity does not interfere with the school's regular instructional activities.

- E. The school district shall not expend public funds for the benefit of students meeting pursuant to this policy beyond the incidental cost of providing space. The school district will provide no additional or special transportation.
- F. Nonschool persons may not direct, conduct, control, or regularly attend meetings and activities held pursuant to this policy.
- G. School district employees or agents may not promote, lead, participate in, or otherwise sponsor meetings or activities held pursuant to this policy.
- H. A copy of this policy and procedures shall be made available to each student who initiates a request to use school facilities.

Legal References: 20 U.S.C. §§ 4071-74 (Equal Access Act)
20 U.S.C. § 7905 (Boy Scouts of America Equal Access Act)
Board of Educ. of Westside Community Schools v. Mergens, 496 U.S. 226, 1105 S.Ct. 2356 (1990)
Good News Club v. Milford Central School, 533 U.S. 98, 1215 S.Ct. 2093 (2001)
Child Evangelism Fellowship of Minnesota v. Elk River Area School Dist. 728, 599 F.Supp. 2d 1136 (D. Minn. 2009)

Cross References: MSBA/MASA Model Policy 902 (Use of School District Facilities and Equipment)
MSBA Service Manual, Chapter 13, School Law Bulletin "O" (Equal Access Act)

The Purpose, General Statement of Policy, Definitions, and Fair Opportunity Criteria sections reflect the language and requirements of the Equal Access Act and so should be adopted as written. School Boards have discretion to adopt reasonable procedures to implement the Act, however. We have provided a section on Procedures as a model.

Adopted: _____

MSBA/MASA Model Policy 903

Orig. 1995

Revised: _____

Rev. 2002

903 VISITORS TO SCHOOL DISTRICT BUILDINGS AND SITES

I. PURPOSE

The purpose of this policy is to inform the school community and the general public of the position of the school board on visitors to school buildings and other school property.

II. GENERAL STATEMENT OF POLICY

- A. The school board encourages interest on the part of parents and community members in school programs and student activities. The school board welcomes visits to school buildings and school property by parents and community members provided the visits are consistent with the health, education and safety of students and employees and are conducted within the procedures and requirements established by the school district.
- B. The school board reaffirms its position on the importance of maintaining a school environment that is safe for students and employees and free of activity that may be disruptive to the student learning process or employee working environment.

III. RESPONSIBILITY

- A. The school district administration shall present recommended visitor procedures and requirements to the school board for review and approval. The procedures should reflect input from employees, students and advisory groups, and shall be communicated to the school community and the general public. Upon approval by the school board, such procedures and requirements shall be an addendum to this policy.
- B. It shall be the responsibility of the superintendent to provide coordination that may be needed throughout the process and provide for periodic school board review and approval of the procedures.

IV. VISITOR LIMITATIONS

- A. An individual or group may be denied permission to visit a school or school property or such permission may be revoked if the visitor(s) does not comply with the school district procedures and regulations or if the visit is not in the best interest of students, employees or the school district.
- B. Visitors are authorized to park vehicles on school property at times and in locations specified in the approved visitor procedures and requirements which are

an addendum to this policy or as otherwise specifically authorized by school officials. When unauthorized vehicles of visitors are parked on school property, school officials may:

1. move the vehicle or require the driver or other person in charge of the vehicle to move it off school district property; or
 2. if unattended, provide for the removal of the vehicle, at the expense of the owner or operator, to the nearest convenient garage or other place of safety off of school property.
- C. An individual or group who enters school property without complying with the procedures and requirements may be guilty of criminal trespass and thus subject to criminal penalty. Such persons may be detained by the school principal or a person designated by the school principal in a reasonable manner for a reasonable period of time pending the arrival of a police officer.

Legal References: Minn. Stat. § 123B.02 (General Powers of Independent School Districts)
Minn. Stat. § 128C.08 (Assaulting a Sports Official Prohibited)
Minn. Stat. § 609.605, Subd. 4 (Trespasses on School Property)

Cross References: